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IN THE SUPREME COURT OF THE UNITED STATES

October Term 1983

YARD-MAN, INCORPORATED,
Petitioner,

-vs-

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), and LOCAL 134, UAW,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTIONS PRESENTED

The central question presented, and the subsidiary questions arising thereunder, are as follows:

I. Whether the life insurance and health insurance benefits provided to retired former employees by a collective bargaining agreement expire upon a plant closing or the expiration of the agreement by which they are created, or whether such benefits create a vested right in the retirees to obtain company-paid insurance for the remainder of their lives.

A. Whether retiree insurance benefits are among the "vested" rights which cannot be reduced or eliminated upon expiration of the collective bargaining agreement under *Allied Chemical & Alkali Workers of America* v *Pittsburgh Plate Glass Co*, 404 US 157; 92 SCt 383; 30 LEd 2d 341 (1971)

B. Whether, in view of a durational clause expressing a date on which the "entire Agreement" expires, a clear expression of intent to exempt retiree insurance benefits is required before such benefits will be deemed to continue beyond the expiration date.

C. If the duration of retiree benefits depends on the language employed in the collective bargaining agreement, what factors are to be employed in determining the intended duration.

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1983

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The petitioner, Yard-Man, Incorporated, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered on September 9, 1983.

OPINIONS BELOW

The Opinion of the Court of Appeals is not yet reported. The Memorandum Opinion of the District Court is unreported. Both opinions appear in the Appendix hereto. (App. pp. 75a-91a, 97a-140a)

JURISDICTION

The opinion and judgment of the Court of Appeals for the Sixth Circuit were entered on September 9, 1983. This petition for a writ of certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked pursuant to 28 USC § 1254(1).

STATEMENT OF THE CASE

In August of 1974, Petitioner Yard-Man, Incorporated ("Yard-Man") and Respondents ("U.A.W.") executed a collective bargaining agreement covering Yard-Man's plant in Jackson, Michigan. The agreement had a stated expiration date of June 1, 1977 and provided health insurance and life insurance benefits to retired Yard-Man employees ("re-

tirees").[1] Due to economic reversals, Yard-Man announced the closing of its Jackson, Michigan plant during the period covered by the agreement.[2] The plant was permanently shut down on October 3, 1975.

In the wake of the plant closing, a disagreement arose as to the duration of the retiree insurance benefits conferred by the collective bargaining agreement. Petitioner's position is that its duty to provide retiree insurance expired no later than June 1, 1977, the date on which the collective bargaining agreement expired. Therefore, it continued to provide health and life insurance to the retirees after the plant closing, but discontinued the insurance on June 1, 1977.

The position of Respondent is that the retirees are entitled to insurance throughout their lives, and that Petitioner's obligation to furnish health and life insurance to the retirees did not end with the plant closing or the expiration of the collective bargaining agreement. Accordingly, Respondents filed suit in the United States District Court for the Eastern District of Michigan, Southern Division, under § 301(a) of the National Labor-Management

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[1] The language of the collective bargaining agreement providing retiree insurance benefits is found in Article XVII, Section 4 (App. pp 47a-48a):

> "When the former employee has attained the age of 65 years then:
>
> The Company will provide insurance benefits equal to the active group benefits under Blue Cross-Blue Shield for the former employee and his spouse.
>
> * * *
>
> Insurance benefits are as follows:
>
> Life Insurance - $8,000.00 (Retirees $2,000.00)
>
> * * *
>
> Hospital and Surgical - Blue Cross-Blue Shield MVF - 2 benefits (Retirees same benefit level)."

[2] Petitioner's decision to close its Jackson, Michigan plant to avoid further losses was a legitimate prerogative of management. *First National Maintenance Corp v NLRB*, 452 US 666; 101 SCt 2573; 69 LEd 2d 318 (1981)

Relations Act of 1947, as amended, 29 USC § 185 (1976). In pertinent part, the U.A.W. alleged that the retirees were entitled to insurance benefits after the expiration of the collective bargaining agreement, and sought specific performance of this putative obligation of Yard-Man and damages for Yard-Man's discontinuation of the insurance.[3]

In due course, both parties filed motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. Each contended that there was no contested issue of material fact, and that the dispositive issue was one of law: whether the retiree insurance benefits were of life-long duration.

On August 2, 1979, the District Court issued a Memorandum Opinion concluding that the retiree benefits provided in the collective bargaining agreement did not terminate with the expiration of that agreement. On December 18, 1979, the District Court issued a second Memorandum Opinion addressed to issues of remedy. On September 4, 1981, the District Court issued its Order, compelling Yard-Man to reinstate the retiree insurance and declaring the remedies to which the U.A.W. and retirees were entitled. The calculation of damages is to be resolved in the future.

The Order of September 4, 1981 contained the language necessary to allow a petition for permission to appeal pursuant to 28 USC § 1292(b). Permission to appeal was sought by Petitioner and was granted by the Court of Appeals by Order of November 13, 1981. (App. p. 96a).

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[3] The allegations regarding retiree insurance benefits are found in Count I of the Complaint. Other areas of disagreement which arose after the plant closing are the subject of Counts II through VII. Counts III through VII were dismissed at the District Court level. The legal questions involved in the disposition of Count II were satisfactorily resolved by the Court of Appeals. This petition involves only the remaining question of the duration of retiree health and life insurance.

On September 9, 1983, the Court of Appeals issued its opinion, affirming the District Court's conclusion that the retiree insurance benefits were of life-long duration. Petitioner now seeks issuance of a writ of certiorari to review that opinion and judgment.

REASONS FOR GRANTING THE WRIT

I. The Courts Have Reached Irreconcilably Conflicting Opinions On the Question of Whether Retiree Insurance Benefits Created by a Collective Bargaining Agreement Continue for the Remainder of the Lives of the Retirees or Whether They Expire Upon a Plant Closing or Expiration of the Agreement By Which They Are Created.

Accepted principles of labor law provide the general framework within which to consider the duration of insurance benefits provided to active employees and retired former employees. It is conceded by the U.A.W. that there is no entitlement to insurance benefits independent of the collective bargaining agreement. And, there is no inherent bar on the creation by collective bargaining agreement of rights which extend beyond the expiration of that agreement. If the agreement expressly confers rights which survive the agreement itself, those rights will be recognized and enforced, even though the agreement itself has expired. *Wiley and Sons* v *Livingstone*, 376 US 543, 555; 84 SCt 909; 11 LEd 2d 898 (1964); *Nolde Brothers, Inc.* v *Bakery Workers*, 430 US 242; 97 SCt 1067; 51 LEd 2d 300 (1977). Finally, while active employees are not obliged to negotiate for insurance benefits for retirees, they may permissibly do so. When a collective bargaining agreement provides for retiree benefits, unless the benefits are created in a fashion that they become "vested rights", they do not survive the expiration of the agreement and may be reduced or eliminated in later agreements. *Allied Chemical & Alkali Workers* v *Pittsburgh Plate Glass Co*, 404 US 157; 92 SCt 383;

30 LEd 2d 341 (1971)[4] (hereinafter "*Pittsburgh Plate Glass*").

In the application of these general principles to retiree benefits[5], two distinct lines of authority have emerged. Many courts and labor arbitrators have held that retiree insurance benefits are not deemed "vested" rights and are therefore benefits limited to the life of the collective bargaining agreement by which they are created. *Turner* v *Teamsters Local 302*, 604 F2d 1219 (9th Cir, 1979); *Metal Polishers Local No. 11* v *Kurz-Kasch, Inc*, 538 F Supp 368 (SD Ohio, 1982); *United Rubber, Cork, Etc, Workers* v *Lee National Corp*, 323 F Supp 1181 (SD NY, 1971); *Steel Packaging Company, Inc*, 74 Lab. Arb. (BNA) 1028 (1980); *Coulter Manufacturing, Ltd*, 59 Lab. Arb. (BNA) 1055 (1972). Other courts and arbitrators, as in the case at bar, have concluded that retiree benefits once granted are irrevocable throughout the life of the retirees. *Upholsterers' International Union* v *American Pad & Textile Co*, 372 F2d

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[4] "Having once found it advantageous to bargain for improvements in pensioners' benefits, active workers are not forever thereafter bound to that view or obliged to negotiate in behalf of retirees again. To the contrary, they are free to decide, for example, that current income is preferable to greater certainty in their own retirement benefits, indeed, to their retirements altogether. By advancing pensioners' interests now, active employees, therefore, have no assurance that they will be the beneficiaries of similar representation when they retire" (*Pittsburgh Plate Glass*, 404 US at 181, footnote omitted).

[5] No similar divergence of opinion has arisen regarding the duration of benefits provided to active workers. There is virtual unanimity that the employer has no duty to continue benefits to active workers after a plant closing or expiration of the collective bargaining agreement. This principle is accepted in the Sixth Circuit. *Fraser* v *Magic Chef-Food Giant Markets, Inc*, 324 F2d 853, 856 (6th Cir, 1963) (employer's obligation to pay wages ends upon discontinuance of business); *Schneider* v *Electric Auto-Lite Company*, 456 F2d 366 (6th Cir, 1972) (employer's obligation to provide fringe benefits, including health insurance, does not extend beyond plant closing and expiration of collective bargaining agreement); *Odie* v *Ross Gear & Tool Co*, 305 F2d 143 (6th Cir, 1962) (seniority rights cease upon business termination); *Elder* v *N Y Central R Co*, 152 F2d 361, 364 (6th Cir, 1945) (rights created by collective bargaining agreement do not extend beyond the life of that agreement).

427 (6th Cir, 1967); *American Standard, Inc*, 57 Lab. Arb. (BNA) 698 (1971); *Roxbury Carpet Co*, 73-2 Lab. Arb. Awards (CCH) § 8521 (1973).

While the cited decisions involve distinct collective bargaining agreements, with slight variations on the precise language employed, there is no principled manner in which the outcomes can be reconciled on the basis of the language of the collective bargaining agreement. Indeed, in the case at bar, the Court of Appeals viewed the language of the cases favoring the U.A.W. as indistinguishable (App, p. 103a), and did not so much as recognize, let alone discuss distinguish, the competing cases (all of which Petitioner brought to the Court's attention).

Upon review of the cited cases, one is unable to avoid the conclusion that they cannot be rationally reconciled. In each, the contractural langauge does not expressly address itself to the continuation of retiree benefits after a plant closing or the expiration of the collective bargaining agreement without renewal. In each, the court or arbitrator purports to find some pertinent language in the contract upon which to hang a finding of the perceived "intent" of the parties. In practice, the result is two conflicting bodies of law, each leading to a conflicting outcome on an issue of national importance.

The methods used in reaching divergent results are themselves conflicting and inconsistent. Many decision-makers begin with the premise that only clear contractural language will be deemed sufficient to overcome the presumption that the parties to a collective bargaining agreement intend to govern their relationship only for the length of that agreement. With due deference to the duration clause, such an approach ordinarily leads to the conclusion that there is no clear intention to confer lifelong benefits to retirees, and that retiree benefits are not life-long.

Cases reaching the contrary conclusion find no occasion to require any particularly clear intent before a lifelong

"vested" right is found, nor do they view the duration clause of the agreement to have any particular significance. As a result, they are led through the tortuous course of reviewing the entirety of the contract in the hope of finding some faint glimmer to shed light on the elusive (and, in reality, often non-existent) "intent" of the parties as to the duration of retiree insurance benefits.

This case provides an excellent example of how the attempt to find such an "intent" can lead, either in good faith or in an attempt to justify the result, to inferences which are in conflict with those of other cases and which cannot withstand critical scrutiny. Petitioner submits that this Court should resolve the conflicting lines of authority by addressing itself to the questions presented.

II. There Are Substantial Grounds for Doubting the Soundness of the Analysis Employed By the Court of Appeals and the Result Reached by that Court.

Petitioner does not intend, at this juncture, to present a full-fledged attack on the merits of the decision of the Court of Appeals. Nonetheless, a few examples will demonstrate how the conflicting outcomes reflect an underlying conflict in the methods used to determine the duration of the retiree benefits. These examples will also demonstrate that there is substantial ground for questioning the correctness of the analysis employed by the Court of Appeals and the result reached by that Court.

In a nutshell, the argument advanced by Petitioner in the Court of Appeals was that rights conferred by a collective bargaining agreement expire with that agreement in the absence of a clear manifestation of intent to extend the duration of these rights. Petitioner further contended that the language of the duration and insurance provisions was free from substantial ambiguity and limited the retiree insurance benefits to the life of the contract. The rationales employed by the Court of Appeals in rejecting these argu-

ments, so that it could look to extraneous considerations to discern "intent", are subject to substantial question.

The Court of Appeals began its discussion by rejecting the premise that a clear manifestation of intent was required to confer a benefit extending beyond the duration of the contract (App, p. 103a, fn. 2). Not only does this approach conflict with that of the cases reaching a contrary result, it is based on a distinction which is largely one of semantics.[6] This distinction is, of course, outcome determinative, as there is no express language which, with any degree of clarity, provides that retiree insurance benefits are of lifelong duration.

Under the Court of Appeals analysis, the durational clause was virtually insignificant, indeed, a mere afterthought in the Court's discussion (App, p. 107a). Under the competing line of authority, the duration clause is a potent starting point and may, by itself, be sufficiently clear as to the duration of benefits conferred thereunder. The method of treating the duration clause is likewise significant, for the language of that clause admits of no exceptions, and the retiree insurance provision does not express a different duration for that benefit.[7]

The Court found no significance to the fact that retiree insurance was expressly "equal to the active group be-

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[6] Under this rationale, if the "benefit" is termed "life-long insurance", it is subject to the requirement of "a clear manifestation of intent before conferring a benefit". Only if the "benefit" is called "insurance" does the exception to the "clear intent" principle arise: "the duration of the benefit once clearly conferred".

[7] The Court of Appeals was unable to find any language specifically exempting retiree insurance from the reach of the duration clause (collective bargaining agreement, p. 30), App, p 50a which provides that notice such as that given by Yard-Man, "shall have the effect of terminating the *entire Agreement*" (emphasis supplied).

nefits"[8] (App, p. 103a). Nor would the Court Consider arguments[9] "based on economic considerations which were not part of the record before the District Court" (App, p 102a, fn. 1), even though this Court judicially noticed the high cost of providing life and health insurance to pensioners in *Pittsburgh Plate Glass*, 404 US at 180.

The arguments which the Court of Appeals found unpersuasive have been granted substantial weight by the cases reaching a contrary result, and have been acknowledged as appropriate principles of construction in other contract settings. Having rejected these arguments, the Court preceeded to discern an intent to created lifelong benefits. There are substantial grounds for questioning the legal and logical bases of the inference of lifelong duration drawn by the Court.

Unlike its approach to "economic considerations", the Court had no hesitancy to judicially notice that retirees may have unilaterally expected that their insurance was of lifelong duration (App, p. 106a). Respondent submits that a

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[8] The Court of Appeals effectively treated this clause as providing retiree insurance equal in kind but unequal in duration to the active group benefits. If the retiree benefits are deemed equal in duration, they plainly expired with the termination of the contract, *Schneider*. In fact, the U.A.W. has made no claim that active group insurance was of the lifelong duration claimed of retiree insurance.

[9] In brief, Yard-Man contended that health and life insurance costs for retirees during the life of a collective bargaining agreement are economically feasible because they are effectively paid for by the ongoing labors of the active workers and are purchased at a group rate by which the cost is offset by the inclusion of young active workers in the group. The cost of lifelong retiree insurance untied to the continuation of operations, is, Petitioner contended, astronomical. This is so because of the number of additional years that insurance must be purchased, the lack of an active work force to generate the income necessary to pay the premiums, and the lack of group rates which reduce the cost by inclusion of younger, presumably healthier, group members. From these economic considerations, Yard-Man contended that it was unlikely that the employer intended to agree to such a financial undertaking a mere year before business failure, or that the active workers intended to forego the present compensation necessary to provide lifelong retiree benefits.

unilateral expectancy does not determine what a contract provides [See *Finnell* v *Cramet, Inc*, 289 F2d 409, 413 (6th Cir, 1961)]. Especially so in light of the recognition in *Pittsburgh Plate Glass* that an expectancy of this type does not assure that retiree benefits will survive beyond the expiration of the agreement by which they are created. And if the "expectancy" is of importance, does it not make more sense to consider the "expectancy" of the employer, a party to the agreement, than to look only to the "expectancy" of the retirees who, while beneficiaries of the agreement, were not parties to its negotiation?

The Court also looked to the duration of other forms of benefit as a basis of comparison. It viewed the fact that insurance for the dependents of a retiree who died during the agreement was continued "until 6/1/77" as indicative that rights created by the agreement were intended to be lifelong (App, p. 105a). Under this rationale, *any* provision of the agreement which did not contain its own expiration date would be deemed interminable. In so ruling, the Court of Appeals ignored the fact that the date limitation in question was necessary to *extend* the duration of coverage to dependents whose insurance would otherwise lapse upon the death of the insured retiree.

The Court also compared retiree insurance to savings and pension programs which the Court viewed as "only" for the duration of the collective bargaining agreement.[10] The Court therefore inferred that no comparable limitation applied to retiree benefits (App, p. 105a). This observation is somewhat misleading, as the pension plan itself *does* continue beyond the duration of the contract (Article XVIII, App, p. 48a) Indeed, the comparison with the pre-

[10] While the Court's opinion refers to Article XIX, it apparently means to refer to Article XVII, which provides, "The savings plan and pension plan program as set forth in the savings plan handbook will continue for the duration of the contract". This provision (which does not use the term "only") appears to simply keep in effect the handbook then existing.

funded pension provision militates in Petitioner's favor by suggesting that benefits extending beyond the agreement were to be pre-funded and, since there was no pre-funding of retiree insurance, it was not intended that such benefits continue beyond the life of the agreement.

The other factor relied upon by the Court was the provision that retirees under the age of 65 would have to bear their own insurance cost while those over 65 would have their insurance paid by the company. The Court intimated that this provision would be "nugatory" or "illusory" if the benefits terminated with the termination of the collective bargaining agreement (App. pp. 101a, 105a).

This analysis misses the mark. An agreement is not "nugatory" or "illusory" simply because only some of the beneficiaries are able to make use of the benefits. For those over 65, they *did* receive company-paid insurance throughout the life of the agreement. Those under 65 received the benefit of obtaining insurance at favorable group rates for the contract period. That those under 65 did not obtain the ultimate benefit of free insurance during the course of the contract does not render the agreement to provide the specified benefits during that period any more "illusory" or "nugatory" than the fact that those under 30 obtained no benefit at all from retiree insurance.

In short, the analysis employed by the Court of Appeals is subject to substantial question. Cases reaching the contrary result are at least equally tenable in adopting a different analysis. The trial judge acknowledged that there was substantial room for difference of opinion, as did a different Court of Appeals panel when it granted permission to appeal. Petitioner submits that this factor also militates in favor of granting the writ.

III. This Case Presents a Recurring Question of Substantial Importance To Labor Relations and Implicates Substantial Questions of National Labor and Economic Policy.

The parties to this agreement apparently anticipated prosperous times and assumed that the union would successfully negotiate for retiree insurance in future agreements. Either they failed to consider the duration of retiree benefits in the event that the employer would experience reversals, or they failed to express their understanding on this point in terms absolutely free from doubt. The conflicting case law reflects that this is a recurrent problem. In view of the economic downturn of recent years, and the number of business failures in its wake, there is every reason to believe that the problem will continue to recur.

Petitioner suggests that this Court should address the problem. At the least, a decision by this Court would provide needed guidance to the lower courts in grappling with a recurrent and difficult issue. Moreover, a decision by this Court would have the effect of drawing to the attention of labor lawyers the potential pitfalls of failing to anticipate the possibility of business reversals. If the parties and their counsel are sensitized to the problem and the way courts will treat it if it arises, they are well-placed to confront the possibility of reversals head-on in the course of negotiations and reach an agreement where both sides are fully aware of the intended effect of their agreement.

The issue also has substantial impact on the relationship between active employees and retired former employees. While the present dispute is between the employer and retirees, the same essential questions can arise between active group members and retirees, as in *Turner*. Recent years have witnessed unprecedented wage concessions necessary to the continued economic existence of employers. The economic "pinch" gives rise to attempts by active workers, as anticipated in *Pittsburgh Plate Glass*, to maintain relatively highly current wages at the sacrifice of deferred or fringe benefits. If retiree benefits, once estab-

lished, are deemed immutable, the effect is to eliminate this class of benefit from future negotiations such that any reduction in the employer's personnel costs must necessarily come from current compensation. To view retiree benefits as lifelong is therefore to diminish the freedom of the employer and active group to structure future negotiations in favor of present compensation.

In addition, the sheer cost of maintaining retiree health insurance for the lives of the retirees may have a substantial impact on the national economy. If lifelong benefits are pre-funded, working capital available for expansion or to weather a short-term economic storm is reduced accordingly.[11] The net effect for a number of businesses is the difference between shutting down and continuing operations in the hope of an economic recovery.

And if the cost of lifelong retiree insurance is not pre-funded, different, but comparable, problems ensue. The business is faced with the option of folding up before the sums needed for retired insurance are spent or, if it continues operations, the eventual ability of retirees to receive their lifelong benefits is jeopardized. Moreover, the potential cost of an unfunded liability of this magnitude serves as a disincentive for another business to consider the merger or acquisition that could provide the capital needed for the continued vitality of the enterprise.

Finally, this case presents important public policy implications. The needs of the aged cannot be denied, but the critical question is whether those needs are to be met by tax-supported governmental agencies or are to be borne by private industry. The Court of Appeals decision effectively shifts to the business community burdens which many

[11] Assume, for example, that a fund of $250,000 is necessary to maintain lifelong retiree insurance. This means that the employer whose assets dip below $250,000 has become insolvent. The predictable result is the failure of the business, cessation of operations, and unemployment of the active workers.

would claim should more properly be borne by the public at large.

In short, the question presented is of substantial magnitude in a host of respects. Its importance far transcends that ordinarily attached to the construction of collective bargaining agreements. The issue presented, and the related questions implicated, are of sufficient magnitude to warrant the attention of this Court.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Sixth Circuit.

Respectfully submitted

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